IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 978 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AJIT PANCHAMLAL JAIN, THRO HISBROTHER NEMICHAND PANCHAMLAL
Versus
STATE OF GUJARAT

Appearance:
1. Special Criminal Application No. 978 of 2003
MR NM KAPADIA for Petitioner
MR PITAMBER ABICHANDANI A.P.P. for Respondent

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 01/12/2003

ORAL JUDGEMENT

Rule. Mr.Pitamber Abichandnai learned A.P.P. waives service of rule on behalf of respondent - State.

At the request of learned counsels for the

parties, the matter is taken up for final hearing today.

2. This petition under Articles 226 and 227 of the Constitution of India has been filed seeking issuance of writ of mandamus or any other appropriate writ or order directing the respondent to release mudammal of offence registered at C.R. No. II-56 of 2003 of the L.C.B. Police Station, Sanand. The mudammal is a truck, bearing registration no. GJ-8T-3903. It appears that on 16th June, 2003, around 11:45 a.m. driver of the petitioner namely Shankerji Bhagaji Chauhan was intercepted by the Police and upon checking the aforesaid vehicle, it was found that barrels containing illicit solvent, each barrel containing 200 ltrs., total 9200 ltrs., of the value of Rs.2,28,284=00 was found. Since the solvent was illegally being carried in the said truck, the driver was immediately arrested and the vehicle was seized.

2.1. The petitioner has, thereafter, preferred an application under the provisions of Section 451 of the Criminal Procedure Code, before the learned Judicial Magistrate, First Class, at Sanand, praying that during the pendency of trial, the offending vehicle be released and possession thereof, be given to the petitioner upon imposition of appropriate conditions. The say of the petitioner is that despite the petitioner having given this application on 11th August, 2003, the learned Magistrate, has not taken any decision on this application. It is further submitted that the Apex Court has said in clear terms that such application should be decided expeditiously and the learned Magistrate, should do it without even waiting for the final outcome. It appears that the vehicle namely the truck which is of the value of Rs. Five Lakhs, as stated in the complaint, is lying at the aforesaid Police Station, since the Police has already seized it, in connection with this offence. It also appears that with a view to get the vehicle released, the petitioner has submitted an application before the learned Magistrate, which is still yet not decided. It further appears that the Apex Court has impressed upon the lower Courts to pass appropriate orders on such applications under Section 451 of the Cr.P.C. submitted to them. It is unfortunate that despite such urgency, the learned Magistrate, has not decided the application under Section 451 of the Cr.P.C., simply on the ground that the Police report is awaited.

3. Mr.N.M. Kapadia, learned advocate appearing for the petitioner has submitted the Police might take its own time to submit its report, but that would not mean that valuable article should be allowed to lie at the

Police Station unattended and its condition be allowed to deteriorate. The Apex Court in the decision rendered in 2003 Cr.L.R. (SC) 103 in the case of Sunderbhai Ambalal Desai v. State of Gujarat has laid down that the application under Section 451 of Cr.P.C. for disposal of the seized vehicle, pending trial be decided at the earliest. In that view of the matter, the learned Magistrate is directed to hear and decide the application which has been submitted by the petitioner under Section 451, at the earliest and not later than 15th January, 2004. This Court has not expressed any opinion on the merits of the case.

3.1. Whatever decision the learned Magistrate may take on this application will be strictly on its merits. Thus, the prayer contained in para 4 (B) is granted. Rule is made absolute to the aforesaid extent.
Direct Service is permitted.

[AKSHAY H. MEHTA, J.]

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